

June 3, 2014

Linda Rubin
375 S. Rio Vista
Brawley, CA 92227

Re: Your Request for Advice
Our File No. A-14-094

Dear Ms. Rubin:

This letter responds to your request for advice regarding conflict of interest restrictions that may apply to you if you participate in decisions of the Pioneers Memorial Healthcare District. Please note that we only provide conflict of interest advice under the Political Reform Act (the “Act”)¹ and Government Code section 1090. We do not provide advice on other conflict of interest restrictions, if any, that could arise such as those governed by the common law. We are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), meaning that any advice we provide assumes the facts the requester provides to us are accurate. If this is not the case, then our advice could be different.

QUESTION

In your capacity as a board member of the Pioneers Memorial Healthcare District (the “District”) may you take part in decisions regarding a potential affiliation, including entering into a memorandum of understanding, with the El Centro Regional Medical Center (the “Medical Center”) even though you are also employed by the Medical Center?

CONCLUSION

Yes. Salary from a local government agency does not constitute “income” under Section 82030(b)(2). Therefore, the Medical Center, which is an agency of the City of El Centro, is not a source of income to you, and you may take part in District decisions regarding the potential affiliation.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You are currently a board member of the District and are employed by the Medical Center as the Dietary Director. The Medical Center is an agency of the City of El Centro. You plan on retiring from the Medical Center later this year. The District is considering affiliation with the Medical Center. No decisions have been made by the District on any issues regarding the potential affiliation with the Medical Center. The first step is to form a task force to consider possible options. The first item that will be considered is a Memorandum of Understanding between the District and the Medical Center.

ANALYSIS

Political Reform Act

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s interests as set forth in Section 87103. (Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest in a given governmental decision.

As a District board member, you are a public official and are subject to the Act’s conflict-of-interest provisions. However, your question involves only step three of the analysis, determining whether you have an interest that may be implicated by the governmental decisions in which you participate. Interests from which a conflict of interest may arise are defined in Section 87103 and Regulations 18703-18703.5, and include:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d); Regulation 18703.1(b).)
- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)
- An interest in a source of income to the official, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- An interest in a source of gifts to the official if the gifts aggregate to \$440 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)

- An interest in the personal expenses, income, assets, or liabilities of the official as well as those of his or her immediate family. This is commonly referred to as the “personal financial effects” rule. (Section 87103; Regulation 18703.5.)

The only interests implicated in the facts you have provided is your potential economic interest in the Medical Center as a source of income and as an interest in your personal finances. Under Section 82030(b)(2) “income” does not include salary received from a state, local, or federal government agency. Therefore, your salary from the Medical Center is not an interest from which a conflict of interest may arise either under Section 87103(c) and Regulation 18703.3 or Regulation 18703.5. Barring any other interest you may have, you are not disqualified from taking part in District decisions regarding the proposed affiliation and memorandum of understanding with the Medical Center.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Under Section 1090, the prohibited act is the making of a contract in which the official has a financial interest and officials are deemed to have a financial interest in a contract if they might profit from it in any way. The decisions you describe do not appear to contemplate the making of a contract in which you are financially interested. Accordingly, you are not prohibited under Section 1090 from participating in these decisions.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl